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In the
Supreme Court of the United States

REGINALD A. COOKE,

Petitioner,

v.

UNITED DAIRY FARMERS, INC., ET AL.,

Respondents.

On Petition for a Writ of Certiorari
to the Supreme Court of Ohio

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Is an attorney at law, who represents a client in conformity with all applicable rules of professional conduct governing pretrial publicity, thereby subject to designation as a limited purpose public figure pursuant to this Court's holding in *Gertz v. Welch*, 418 U.S. 323 (1974), so as to be required to submit evidence in a subsequent defamation action that the defendants published their defamatory statements with actual malice?

PARTIES TO THE PROCEEDING

Petitioner

Petitioner is an individual who was the plaintiff in the state court defamation action which gave rise to this appeal.

Respondents

Respondent United Dairy Farmers, Inc. is an Ohio for-profit corporation which to Petitioner's knowledge and belief has no parent corporation and is not ten percent owned by any publicly traded company. Respondent Brian Gillan is an individual.

TABLE OF CONTENTS

QUESTION PRESENTED	i
PARTIES TO THE PROCEEDING	ii
TABLE OF CONTENTS	iii
TABLE OF AUTHORITIES	iv
PETITION FOR WRIT OF CERTIORARI	1
OPINIONS BELOW	1
STATEMENT OF JURISDICTION	1
CONSTITUTIONAL PROVISIONS INVOLVED	2
STATEMENT OF THE CASE	3
ARGUMENT FOR GRANTING WRIT	13
CONCLUSION	17
APPENDIX	
Appendix A - Supreme Court of Ohio Opinion Dated 9-7-05	1a
Appendix B - Ohio Court of Appeals Opinion Dated 3-31-05	2a
Appendix C - Common Pleas Court Decision Dated 4/23/05	28a

Appendix D - Ohio Court of Appeals Judgment Entry Dated 6/17/03	55a
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Appendix E - Common Pleas Entry Dated 6/7/02	75a
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Appendix F - UDF Press Release Packet	95a
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TABLE OF AUTHORITIES

Curtis Publishing Co. v. Butts

388 U.S. 130 (1967) 13

Gertz v. Welch

418 U.S. 323 (1974) 13, 16

New York Times Co. v. Sullivan

376 U.S. 254 (1964) 13

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully petitions this Court for the issuance of a Writ of Certiorari to review the judgment rendered in this case by the Ohio Tenth District Court of Appeals on March 31, 2005.

OPINIONS BELOW

The opinion advanced for review is the March 31, 2005 opinion of the Franklin County Court of Appeals, Ohio Tenth Appellant District, in Appeal No. 04APE-08-817, a copy of which is included in Appendix B at 2a-27a. The July 30, 2004 decision and entry of the Franklin County, Ohio Court of Common Pleas from which Respondent prosecuted Appeal No. 04APE-08-817 is included in Appendix C at 28a-54a, and an opinion of the Franklin County, Ohio Court of Appeals in an earlier appeal of this case, Appeal No. 02APE-07-781, is included in Appendix D at 55a-74a. Appellant timely sought review of Appeal No. 04APE-08-817 by the Supreme Court of Ohio.

STATEMENT OF JURISDICTION

The Supreme Court of Ohio entered its final judgment dismissing Respondent's Memorandum in support of Jurisdiction on September 7, 2005. (Appendix A at 1a). Petitioner respectfully invokes this Court's jurisdiction under and pursuant to the provisions of 28 U.S.C. §1257(a).

CONSTITUTIONAL PROVISION INVOLVED

This case involves the First Amendment to the United States Constitution as made applicable to state court proceedings by the Fourteenth Amendment to the United States Constitution. Those amendments provide in parts relevant to this Petition as follows:

Congress shall make no law.....abridging the freedom of speech or of the press

* * * *

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person or property without due process of law, nor deny any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

Petitioner Reginald Cooke is an attorney at law who at all times material to this petition was self-employed as a sole practitioner in Columbus, Ohio. In February of 1996 the President of the Columbus Urban League, Samuel Gresham, contacted Cooke and asked Cooke if he would consider representing two African-American individuals who were pursuing claims that their former employer, United Dairy Farmers, Inc., had terminated their employments due to their race. United Dairy Farmers, Inc. owns and operates in excess of two hundred convenience stores in Ohio and adjacent states, approximately sixty of which are located in the Columbus, Ohio area, and former employees Maudie Williams and her son Michael Williams had been previously employed at a United Dairy Farmers store in Columbus.

Commencing in mid-1995, the Williamses were represented by another attorney, Daniel Klos, who assisted them in filing race discrimination complaints with the Ohio Civil Rights Commission. Attorney Klos announced his intention to withdraw as the Williams' counsel in late 1995, and in February of 1996 the Ohio Civil Rights Commission issued a determination that Maudie Williams' race discrimination complaint was supported by probable cause. Pursuant to Maudie Williams' request that Mr. Gresham assist her in locating an attorney who was willing to represent her, Samuel Gresham contacted Cooke shortly after the issuance of that probable cause determination.

Cooke first met with the Williamses on February 12, 1996, and agreed to represent them. Cooke then represented the Williamses in United Dairy Farmers' unsuccessful appeal of the Ohio Civil Rights Commission's probable cause determination, and in a subsequently-filed civil action, Case

No. C2-98-1060, in the United States District Court for the Southern District of Ohio, Eastern Division.

The Ohio Civil Rights Commission's probable cause determination was in large measure based on the testimony of two individuals, store manager Deborah Ferguson, who had been Maudie Williams' supervisor during her employment at United Dairy Farmers, and an assistant store manager named Patricia Munyan:

*** Deborah Ferguson, White, was the Manager when Charging Party was discharged. ***

Ferguson stated that Glenn Broesma, White, District Supervisor, told her "not to hire any more fucking niggers" in that store. Broesma wanted Ferguson to write Charging Party [Maudie Williams] up "for everything she did" because "he was building a case to fire her." Broesma said that respondent [UDF] was changing supervisors and that [UDF Supervisor] William Bales, White, "would not put up with charging Party's shit and he'll make sure she's fired." Bales "rode (Charging Party) real bad." After two black employees were discharged for stealing, Bales said "You see what happens when you hire them in here, they rip the store off."

Patricia Munyan, White, was the Assistant Manager when Charging Party worked for Respondent. *** She recalled that Broesma and Bales told Ferguson to write Charging Party up "for anything she possible could so (Charging Party) would be terminated." She heard Broesma say "not to hire any more fucking niggers because all they do is steal."

In the aftermath of the Ohio Civil Rights Commission's findings, the Williams' discrimination claims garnered the attention of the local Ohio media. While Cooke was involved in planning several press conferences involving the Williamses, which he attended, the record of this case does not describe a single statement that Cooke made to the press.

United Dairy Farmers aggressively denied the Williams' discrimination claims, and in December of 1996 hired a public relations firm, Edward Howard & Company, to publicly advocate and disseminate those denials.

During the months following the Ohio Civil Rights Commission's probable cause determination, Cooke was contacted by a large number of United Dairy Farmers employees, former employees, employment applicants, and customers who had either witnessed allegedly discriminatory activity or sought to pursue race discrimination claims against United Dairy Farmers, and in October of 1997 the Columbus Community Relations Commission issued a finding that probable cause existed to believe that the City of Columbus' criminal race discrimination law had been violated by both United Dairy Farmers, Inc. and a United Dairy Farmers store manager named Colleen Cheadle. During that same month, Cooke filed a second federal court action against United Dairy Farmers and its district managers, Case No. C2-97-1071, on behalf of seven additional claimants.

United Dairy Farmers was initially defended by attorney Brian Gillan of the Cincinnati-based law firm of Dinsmore & Shohl, who represented UDF in its appeal of the Ohio Civil Rights Commission findings in Maudie Williams' case, and in the defense of the two federal court actions in which Cooke represented the plaintiffs. United Dairy Farmers also hired attorney Larry James of the Columbus, Ohio law firm of

Crabbe, Brown, Jones, Potts & Schmidt, now known as Crabbe, Brown & James (hereinafter, "Crabbe, Brown"), to defend the criminal race discrimination case against former store manager Colleen Cheadle.

In early 1998 Respondent Gillan was hired by United Dairy Farmers as its Chief Operating Officer and Legal Counsel. While Gillan thereafter remained of-counsel with the Dinsmore & Shohl firm, upon accepting that employment he ceased to maintain an office at that law firm, and his duties as outside counsel were assumed by another firm attorney named Jerry Sallee. At about that same time, attorney Larry James was hired as co-counsel in the defense of the two federal court civil actions.

Unbeknownst to Cooke, in March of 1998 an individual who identified himself as "RJ" contacted United Dairy Farmers' Human Resources Manager, Alan Lirtzman, and offered to sell United Dairy Farmers a videotape which depicted former UDF assistant manager Patricia Munyan recanting her previous testimony to the Ohio Civil Rights Commission. Lirtzman conveyed the substance of that communication to Gillan and scheduled to meet with "RJ" at the Columbus, Ohio offices of the Dinsmore & Shohl law firm on April 1, 1998. Lirtzman was sufficiently apprehensive of RJ that he arranged for an employee of United Dairy Farmers' Security Division, John Osbourne, to serve as his bodyguard at that meeting.

During the April 1 meeting with RJ, Lirtzman and Osbourne viewed a 10-minute long homemade videotape which depicted Patricia Munyan watching television and telling RJ, who was apparently her boyfriend, that she had fabricated her previous testimony to the Ohio Civil Rights Commission during its investigation of Maudie Williams'